(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 19 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner[1] describes itself as a recycling business. It seeks to permanently employ the beneficiary in the United States as a compliance systems manager. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). [2] The priority date of the petition is July 3, 2012.[3] The job duties of the proffered position are listed at Part H of the labor certification as follows:

> Manage company's regulatory compliance programs through data acquisition and reporting, reviewing and updating plans, assisting field and in house staff in collecting field data from company facilities, budgeting, coordinating, and overseeing completion of projects, and utilizing current computer technology to update facility records and databases.

Part H of the labor certification further states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in Engineering or foreign equivalent.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months; Computer Systems Technician.

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[1] The petitioner's address on the Form I-140 is [redacted] but it is listed as [redacted] on the California Secretary of State website. *See* http://kepler.sos.ca.gov/ (accessed November 15, 2013). The petitioner should resolve this discrepancy in any future filings.

[2] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[3] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

H.14. Specific skills or other requirements: None.

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree from , completed in 1988. The record contains a copy of the beneficiary's Bachelor of Science in Electrical Engineering diploma and transcripts from issued in 1988.

The record also contains an evaluation of the beneficiary's educational credentials prepared by for on December 12, 2011. The evaluation states that the beneficiary's education is equivalent to a U.S. Bachelor of Science degree in Electrical Engineering awarded by a regionally accredited university in the United States.[4]

Part K of the labor certification states that the beneficiary possesses the following employment experience:

- Manager with in Gardena, California from January 1, 2001 until December 31, 2012;
- Senior Technician with in Torrance, California from December 1, 1997 until November 1, 1999; and
- Supervisor with in El Segundo, California from June 1, 1990 until August 31, 1996.

The record contains an experience letter, dated October 10, 2012, from the beneficiary, in his capacity as Manager, on letterhead stating that the company employed the beneficiary as a manager from January 1, 2001 until present. The record also includes two letters dated May 29, 2013, and one affidavit executed on June 3, 2013, from customers of the beneficiary.

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[4] We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. EDGE states that the Bachelor of Science degree in the Philippines "represents attainment of a level of education comparable to a bachelor's degree in the United States." http://edge.aacrao.org/country/credential/bachelor-of-artssciencescommerce-etc?cid=single (accessed November 15, 2013).

The director's decision denying the petition states that the petitioner has not demonstrated that the beneficiary is qualified as a member of the professions holding an advanced degree, and that the petitioner has not demonstrated that the beneficiary is qualified for the job offered.

On appeal, counsel for the petitioner states that the director did not accord appropriate consideration to the submitted evidence; that is a sole proprietorship and is managed and owned by the beneficiary; that the beneficiary is the only person qualified to attest to his experience within the hierarchy; that the tax returns corroborate the beneficiary's attestation; that sole proprietors do not issue IRS Forms W-2 or 1099 to themselves, so the only documentation of the beneficiary's work experience with would be an attestation from the owner or manager of the company; that three affidavits were submitted to corroborate the certificate of employment issued by the manager of ; that IRS Forms W-2 and 1099 do not document work experience; and that the three submitted affidavits contained sufficient information to corroborate the beneficiary's work experience as required by *Mater of Katigbak*, 14 I&N Dec. 45 (R.C. 1971).

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.[5] The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[6] A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.[7]

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

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[5] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

[6] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[7] *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[8] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the

[8] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.[9]

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[9] According to a Memorandum dated March 20, 2000, from Michael D. Cronin, Acting Associate Commissioner, Office of Programs, USCIS, and William R. Yates, Deputy Executive Associate

In the instant case, the petitioner asserts that the beneficiary may be classified as an advanced degree professional based on a foreign equivalent degree to a U.S. bachelor's degree followed by at least five years of progressive experience in the specialty. The petitioner has established that the beneficiary has a foreign equivalent degree to a U.S. bachelor's degree; however, the petitioner has not established that the beneficiary has at least five years of progressive experience in the specialty.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

As discussed above, the record contains an experience letter, dated October 10, 2012, from the beneficiary, in his capacity as Manager, on letterhead stating that the company employed the beneficiary as a manager from January 1, 2001 until present. The letter details his duties as follows:

> His job duties are to manage the company's regulatory compliance programs through data acquisition and reporting, reviewing and updating plans, assisting field and in house staff in collecting data from the company's budgeting, coordinating, and overseeing the completion of projects by utilizing current computer technology to update the company's records and databases.

The letter further indicates that the beneficiary's current salary is $35,000 and that he works 11:00 am to 8:00 p.m. Monday through Friday.

The record includes IRS Forms 1040, U.S. Individual Income Tax Return, for the beneficiary for tax years 2001 through 2012 (with the exception of 2010 for which a tax return transcript was provided). These financial records reflect that the beneficiary is the sole proprietor of in Gardena, California, and they do not establish his work schedule or indicate his job title or job duties.

A sole proprietorship is a business in which one person operates the business in his or her personal capacity. Black's Law Dictionary 1398 (7th ed. 1999). Sole proprietors report income and expenses from their businesses on their individual federal income tax return each year. The business-related

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Commissions, Office of Field Operations, USCIS, entitled *Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants*:

> "Progressive experience" is not defined by statute or regulation. Its plain meaning within the context of EB-2 adjudications is relatively simple: employment experience that reveals progress, moves forward, and advances toward increasingly complex or responsible duties. In short, progressive experience is demonstrated by advancing levels of responsibility and knowledge in the specialty.

income and expenses are reported on Schedule C and are carried forward to the first page of the IRS Form 1040.

As detailed on Schedules C to the beneficiary's IRS Forms 1040, the principal business of is video rentals. The Schedules C reflect that the beneficiary paid no wages to employees or contract labor in any year from 2001 through 2012. Therefore, the beneficiary could not have "assisted field and in house staff in collecting data" as asserted in the employment verification letter dated October 10, 2012, as there appear to be no field or in-house staff other than the beneficiary at his video rental business.

Further, it is not clear which "regulatory compliance programs" the beneficiary managed at his video rental store. The job duties listed in the employment verification letter dated October 10, 2012 are virtually identical to those listed on the labor certification for the proffered job of regulatory compliance manager. However, the duties of a regulatory compliance manager at a recycling business do not correspond with the duties of a sole proprietor of a small video rental store. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). [10]

Further, the Schedules C to the beneficiary's IRS Forms 1040 do not reflect that the beneficiary earned a net profit of $35,000 from in any year from 2001 through 2012. The net profit of from 2001 through 2012 was as follows:

Year	Net Profit
2001	(12,378)
2002	(3,906)
2003	(2,150)
2004	5,748
2005	9,034
2006	13,023
2007	17,881
2008	9,382
2009	17,105
2010	12,747
2011	14,095
2012	13,526

[10] The beneficiary's letter is self-serving and does not provide independent, objective evidence of his prior work experience. *See Matter of Ho*, 19 I&N Dec. at 591-592 (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

The record includes two letters dated May 29, 2013, and one affidavit executed on June 3, 2013, from customers of the beneficiary. The first letter dated May 29, 2013, is from in her capacity as Owner/Agent of a rental property[11] in San Diego, California. stated as follows regarding the beneficiary's work experience:

> I had been engaging the services of [the beneficiary] since 1997 when he was employed with a computer company in Torrance, California to manage and update my computer systems up to the present time. He managed and continues to manage my business' regulatory compliance programs and consistently reviews them for updates and new data. He also upgraded and continues to upgrade my company's database and record keeping systems.

It is unclear what types of regulatory compliance programs the beneficiary managed for the owner of a single condominium rental unit. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The letter from does not indicate the beneficiary's work schedule and it does not detail advancing levels of responsibility and knowledge in the required specialty. It does not provide independent, objective evidence of the beneficiary's five years of progressive experience in the required specialty.

Additionally, the letter from does not verify the beneficiary's employment with in Torrance, California, which was listed on the labor certification, as it is not from *See* 8 C.F.R. § 204.5(g)(1). Further, indicates that the letter "is being submitted to corroborate [the beneficiary's] employment history with " but the duties listed in the letter are not duties commensurate with managing a video rental store. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. The letter does not verify the beneficiary's full-time employment as a manager with

The second letter dated May 29, 2013, is from in her capacity as President of in Gardena, California.[12] stated as follows regarding the beneficiary's work experience:

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[11] According to public records, the rental property is a single condominium unit. *See* https://arcc.sdcounty.ca.gov/Pages/Assessors-Roll-Tax.aspx (accessed November 13, 2013).

[12] According to the California Secretary of State website, was incorporated in the State of California on March 12, 2008. *See* http://kepler.sos.ca.gov/ (accessed November 13, 2013).

> I have hired [the beneficiary's] services intermittently from 2003 to 2011 to manage and update my computer systems. He also updated my company's customer and inventory databases so I could operate my business without any problem. My business relies on sound and reliable computer system [sic] to easily track inventory levels for budget and ordering purposes.

This letter does not provide independent, objective evidence of the beneficiary's five years of progressive experience in the required specialty. It does not detail the beneficiary's work schedule to establish that his "intermittent" work constituted five years of progressive experience, and it does not detail advancing levels of responsibility and knowledge in the required specialty.

Further, indicated that the letter "is being submitted to corroborate [the beneficiary's] work involvement at " but the duties listed in the letter are not duties commensurate with managing a video rental store. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. The letter does not verify the beneficiary's full-time employment as a manager with

The affidavit executed on June 3, 2013, is from in his capacity as President of in Hawthorne, California. stated as follows regarding the beneficiary's work experience:

> I have known [the beneficiary] personally and as a business vendor since 1997 up to present;
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> [The beneficiary] is the owner of in the City of Gardena since 2001. He manages the business' regulatory compliance programs through data acquisition, reporting, reviewing and updating plans. He assists field and in house staff in collecting data for the business' budget. He also coordinates and oversees the completion of business' projects by utilizing his knowledge of computer technology to update the business' records and database.
>
> I have engaged the services of [the beneficiary] off and on from 2001 up to present as he provides computer services for my company.

The job duties listed in 's affidavit are virtually identical to those listed on the labor certification for the proffered job of regulatory compliance manager. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The affidavit does not indicate the beneficiary's work schedule and it does not detail advancing levels of responsibility and knowledge in the required specialty. The affidavit does not provide independent, objective evidence of the beneficiary's five years of progressive experience in the required specialty, and it does not verify the beneficiary's full-time employment as a manager with

The petitioner has not resolved the inconsistencies in the record with independent objective evidence of the beneficiary's five years of progressive experience in the required specialty. Taken as a whole, the evidence does not establish that the beneficiary gained advancing levels of responsibility and knowledge in the required specialty. Based on the aforementioned issues, the record does not establish that the beneficiary possessed five years of post-baccalaureate experience in the specialty.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position requires a bachelor's degree in engineering or foreign equivalent, and 60 months of experience in the proffered position or as a computer systems technician. For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses the required experience for the offered position. The petitioner has not established that the beneficiary had 60 months of experience in the proffered position of compliance systems manager, or 60 months of experience as a computer systems technician.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.